IN THE

Supreme Court of The United States

OCTOBER TERM, 1944

No. 452

NATIONAL LABOR RELATIONS BOARD,
Petitioner.

v.

LeTOURNEAU COMPANY OF GEORGIA,
Respondent.

On petition for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

MEMORANDUM FOR LeTOURNEAU COMPANY OF GEORGIA

Toccoa, Georgia
Gainesville, Georgia

Clifton W. Brannon,
A. C. Wheeler,
Attorneys for respondent,
LeTourneau Company of Georgia.

On the Brief:
C. M. McClure,
Toccoa, Ga.

INDEX

TABLE OF CONTENTS

LIST OF AUTHORITIES CITED

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OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 79-82) is reported in 143 F. (2d) 67. The findings of fact, conclusions of law and order of the Board (R. 55-73) are reported in 54 N. L. R. B. 1253.

JURISDICTION

The decree of the Circuit Court was entered June 23, 1944. We do not have the date of filing the petition for certiorari.

The jurisdiction of this Court is invoked under § 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, U. S. C. A. Title 28, § 347, and § 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS FOR DECISION

Upon a charge made by United Steel Workers of America, CIO, National Labor Relations Board issued a complaint against LeTourneau Company of Georgia. (R. 16-19).

ACTS CHARGED AS VIOLATION OF NATIONAL LABOR RELATIONS ACT

The Board charged that respondent had suspended two named employees for two days each for distributing Labor Union literature outside the plant premises and because they had joined and assisted in the organization of a Union and engaged in concerted activities with other employees for their mutual aid and protection.

The sole overt acts charged are embraced in the language above. (R. 16-19) All other charges not embraced in the two acts above specified were dismissed by the Trial Examiner and no exception was made.

The Board contended that by the two acts specified above respondent had violated Section 7 and Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. (R. 18-19)

By reference to the complaint (R. 18-19) it will be seen that it contains no charge that respondent had violated Section 1 of the Act.

By the petition (Appendix page 17) it seems to be now contended that respondent by said Act has violated Sections 1, 7, 8 (1) and (3).

INTERMEDIATE REPORT
(R. 32)

The Trial Examiner found that respondent had not engaged in the unfair labor practices as charged and recommended that the complaint be dismissed in its entirety. (R. 35-46-47).

DECISION OF BOARD

Upon exceptions by United Steel Workers of America and the Regional Attorney for the Board, the full Board reversed the decision of the Trial Examiner.

DECISION OF THE COURT

Respondent petitioned United States Circuit Court of Appeals, Fifth Circuit, to vacate and set aside the decision and order of the Board and by way of response to this petition the Board petitioned that Court

for an order or judgment directing the enforcement of its decision and order. The Circuit Court granted the petition of respondent, denied the petition of the Board and entered an order and decree vacating the Board's decision and order and it is this decision petitioner seeks to have vacated and set aside.

BASIS FOR DECISION OF UNITED STATES CIRCUIT COURT OF APPEALS

Respondent employed more than two thousand people. For the convenience of its employees it graded and paved two parking lots where two to three hundred automobiles were parked daily. Merchants from nearby towns were in the habit of employing boys to distribute their advertisements among these employees. These boys and other distributors of pamphlets would enter these two parking lots, resulting in littering of the lots and a series of thefts from the automobiles. (R. 60).

The respondent, at its own expense, placed guards over these lots and kept them clean and in July, 1941, promulgated a rule that "in the future no merchant, concern, company, or individual, or individuals will be permitted to distribute, post or otherwise circulate handbills or posters, or any literature of any description on company property, without first securing permission from the personnel department". (R. 60) This is in the Board's finding of fact.

That this rule was promulgated and effective from July 3, 1941, there was no question. That the two men

who were suspended for two days each knowingly violated the rule, there is likewise no question. That both men continued in the service of respondent is also without question.

At the time the rule was promulgated there had been no effort to organize a Union at respondent's plant. In February, 1943, the Congress of Industrial Organizations commenced to organize respondent's employees. An election was held April 8, 1943, resulting in defeat of CIO. Thereafter the Union continued its effort to organize the employees. (R. 61).

The Board itself found:

> "In spite of the apparent lack of uniformity in the printed version of the respondent's rule against distributing literature on plant premises, it is uncontradicted in the record that, since July 3, 1941, the plant-protection force has strictly enforced a no-distributing-no-posting rule on the respondent's premises, including the two parking lots. There is no evidence that either outsiders or employees have been permitted to distribute literature of any kind on the lots since that time." (R. 61).

The Board also found:

> "That the record does not support a charge that the rule was discriminatorily enforced against Ferguson and Ayers. It is undisputed that the rule against distribution has been

applied to all persons without exception seeking to distribute literature on the parking lots where Ferguson and Ayers were apprehended." (R. 64).

We submit that under these undisputed facts the Board was without authority to find that respondent had violated any provisions of National Labor Relations Act, simply by suspending these two employees for two days each for an undisputed violation of a rule promulgated at a time when there was no thought of a Union at respondent's plant.

The record is without conflict that this rule was not enforced or attempted to be enforced at any place other than in the plant and on these two parking lots.

See Appendix, page 17, Petitioner's brief in Circuit Court and Vol. 2, R. 171, 236,237.

In substance the complaint against respondent that it had suspended the two employees, because they had joined, and assisted in the organization of a Union, was, by the Board's own decision, completely refuted.

Yet the Board seeks to say that notwithstanding the fact that respondent had in no way discriminated against the two men for Union activity, nevertheless, the rule though enforced without discrimination, amounts to a violation of the Act. We submit this is not tenable, and ought not to be ground for the grant of a certiorari.

LAW INVOLVED

If there is a conflict in the decision of the Circuit Court in this case and that of Republic Aviation Corporation v. National Labor Relations Board, 142 F. (2d) 193, then that case is the one that ought to be reviewed, and reversed, because it is in conflict with many dicisions among them being:

Midland Steel Product Co. v. National Labor Relations Board, 113 F. (2d) 800;

National Labor Relations Board v. Williamson-Dickey Co., 130 F. (2d) 260;

Carter Carburetor Company v. National Labor Relations Board, 140 F. (2d) 714;

National Labor Relations Board v. El Paso Electric Co., 133 F. (2d) 168.

It seems to us the decisions in the cases just cited are supported by better reason, and they are in harmony with the decision of this Court in National Labor Relations Board v. Jones & Laughlin S. Corporation, 301 U. S. 1, 81 L. E. 893, to the effect:

> "The National Labor Relations Act - - - - does not interfere with the normal exercise of the right of an employer to select his employees or discharge them, so long as he does not under cover of that right intimidate or coerce his ~~his~~ employees with respect to their self-organization and representation."

Since the Board itself found that respondent by enforcing its rule against distribution of literature did not discriminate against the employees in question, and in effect that the enforcement of the rule was not done under cover of a right to intimidate or coerce these employees with respect to their self-organization and representation—then it follows as the night follows the day that respondent could suspend these employees for good cause, or no cause.

National Labor Relations Board v. Blue Bell Globe Co., 120 F. (2) 974.

It is a sound and necessary policy that the power to review the decisions of Circuit Courts of Appeals be exercised sparingly and only in cases of gravity and importance. Surely the burdens now resting upon this Court with respect to its duty to this Nation at one of the most strategic points of history are enough without its being called upon to examine into a case where two men have been disciplined involving only four days time for the unquestioned violation of a rule without any discrimination against the men in question and who are continuing in the service of their employer.

Forsyth v. City of Hammond, et al, 166 U. S. 506, 41 L. E. 1095;

In re: John Woods, 143 U. S. 202, 36 L. E. 125;

Houston Oil Co. v. Goodrich, et al, 235 U. S. 440; 62 L. E. 385.

This case does not fall within the principle upon which certiorari was granted in National Labor Relations Board v. Waterman Steamship Corporation, 309 U. S. 206, 84 L. E. 704, and National Labor Relations Board v. Express Publishing Company, 312 U. S. 426, 85 L. E. 930.

We submit petitioner has not carried the burden resting upon it of showing in what respect the decision complained of is erroneous.

Beechnut Packing Company v. Federal Trade Commission, 257 U. S. 441, 66 L. E. 307.

Petitioner does not present a case of such peculiar gravity and general importance as to require the consideration of this already over-burdened Court.

The writ should be denied.

Toccoa, Georgia
Gainesville, Georgia

Clifton W. Brannon,
A. C. Wheeler,
Attorneys for respondent,
LeTourneau Company of Georgia.

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C. M. McClure,
Toccoa, Ga.